

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PERCY MARTIN and GENERAL SERVICES ADMINISTRATION,
CLASSIFICATION & PAY BRANCH, Chicago, Ill.

*Docket No. 96-2086; Submitted on the Record;
Issued January 11, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly reduced appellant's compensation effective April 30, 1995 based on his capacity to earn wages as a security guard monitor; and (2) whether the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

With respect to the first issue, the Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated and finalized April 16, 1996 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

With respect to the second issue, the Board finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹ the Office's regulations provide that a claimant must (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.³ When a claimant fails to meet one of the

¹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

² 20 C.F.R. §§ 10.138(b)(1), 10.138(b)(2).

above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴

In support of his May 22, 1996 request for reconsideration of the Office's April 16, 1996 decision, appellant submitted a list of security firms he contacted, which included the results of his inquiries about the availability of jobs as a security guard monitor. Appellant argued that this evidence showed that the position of security guard monitor was not readily available in his geographical area.⁵ The Board notes that appellant had already submitted similar argument and evidence, which had already been considered and rejected by the Office. Although appellant contacted a few additional security firms in connection with his May 22, 1996 reconsideration request, the nature of the argument and evidence submitted was essentially the same as the argument and evidence which had previously been considered. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.⁶

In the present case, appellant has not established that the Office abused its discretion in its June 13, 1996 decision, by denying his request for a review on the merits of its April 16, 1996 decision, under section 8128(a) of the Act, because he has failed to show that the Office erroneously applied or interpreted a point of law, that he advanced a point of law or a fact not previously considered by the Office or that he submitted relevant and pertinent evidence not previously considered by the Office.

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ It should be noted the list reveals that some of the security firms indicated that jobs as security guard monitors were available.

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The decisions of the Office of Workers' Compensation Programs dated June 13 and April 16, 1996 are affirmed.

Dated, Washington, D.C.
January 11, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member